REMARKS

At the time the current Official Action was mailed, the Examiner rejected claims 1-21 and 23-25. In view of the following remarks, Applicant respectfully requests reconsideration and allowance of all pending claims.

Rejections under 35 U.S.C. § 103

The Examiner rejected claims 1-21 and 23-25 under 35 U.S.C. § 103(a) as being unpatentable over Buxton (U.S. Patent No. 6,182,279, hereinafter "Buxton") in view of Qureshi (U.S. Patent No. 5,758,154, hereinafter "Qureshi"), in view of "The Windows NT Command Shell" by Tim Hill (hereinafter "Hill"), and further in view of Applicant's Admitted Prior art (hereinafter "AAPA"). Applicant respectfully traverses this rejection.

Legal Precedent

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). However, it is not enough to show that all the elements exist in the prior art since a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396. (2007). It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* Specifically, there must be some articulated reasoning with a rational underpinning to support a conclusion of obviousness; a conclusory statement will not suffice. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Indeed, the factual inquiry determining whether to combine references must be thorough and searching, and it must be based on *objective evidence of record*. *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002).

Furthermore, the *KSR* court did not diminish the requirement for objective evidence of obviousness. *Id.* at 1396 ("To facilitate review, this analysis should be made explicit." See *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"). As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."); s*ee also, In re Lee,* 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002) (holding that the factual inquiry whether to combine references must be thorough and searching, and that it must be based on *objective evidence of record*).

Additionally, Applicant respectfully reminds the Examiner that, during patent examination, the pending claims must be given an interpretation that is *reasonable* and *consistent* with the specification. *See In re Prater*, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969); *see also In re Morris,* 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); *see also* Manual of Patent Examining Procedure §§ 608.01(o) and 2111. Moreover, any interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *See In re Cortright*, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); *see also* Manual of Patent Examining Procedure § 2111. As further explained in Section 2111.01 of the Manual of Patent Examining Procedure, the words of the claim must be given their plain meaning unless the applicant has provided a clear definition in the specification. *See In re Zletz*, 893 F.2d 319, 321, 13 U.S.P.Q.2d 1320, 1322 (Fed. Cir. 1989). Again, the plain meaning refers to an interpretation by those of ordinary skill in the art. *See In re Sneed,* 710 F.2d 1544, 218 U.S.P.Q. 385 (Fed. Cir. 1983).

Deficiencies of the Rejection

Applicant notes that the Examiner has maintained use of the previously cited references, Buxton and Qureshi, while adding Hill and AAPA to reject claims 1-21 and 23-25. Applicant maintains that, as previously argued, Buxton and Qureshi do not disclose all features of

independent claims 1, 15, and 21. Further, Applicant asserts that there are several deficiencies with the cited references and with the asserted combination. Applicant believes that claims 1-21 and 23-25 are allowable over the cited references, taken alone or in combination, for at least the following reasons:

1. Buxton does not disclose a "command line utility" as recited by independent claims 1, 15, and 21

Applicant strongly objects to the Examiner's parsing of the term "command line utility," as recited independent claims 1, 15, and 21, into the term "utility." In justifying this interpretation, the Examiner stated: "Examiner reminds the applicant that each claim is to be given its broadest reasonable interpretation…[w]hile examiner understands the distinction that applicant attempts to make here, Examiner believes the term "utility", when given its broadest reasonable interpretation is anticipated by the Buxton patent." Final Office Action, page 18.

As stated above, Applicant reminds the Examiner that the claims are to be given their broadest **reasonable** interpretation, not their broadest **possible** interpretation. While it may be possible to interpret a "command line utility" as a "utility," Applicant asserts that one of ordinary skill in the art would interpret the term "command line utility" as an entire element and would interpret the modifier "command line" as further describing the term utility as the term "command line utility" has a commonly understood meaning in the art. *See In re Cortright* ("any interpretation of the claims *must also be consistent with the interpretation that those skilled in the art would reach*." (Emphasis added)). Additionally, in further support of the interpretation of "command line utility" as "a utility executable from the command line prompt," Applicant notes that in the Office Action mailed September 11, 2006, the Examiner stated that the "accepted meaning" of the term "command line utility" is "a utility that is executed from the command line prompt." Office Action mailed September 11, 2006, page 4.

Applicant also notes that, despite the Examiner's admission as to the definition of a "command line utility" in an earlier Office Action, the claim was further rejected under 35

U.S.C. § 112 as indefinite. In the Pre-Appeal Brief Request for Review filed on July 23, 2007, Applicant traversed the § 112 rejection. In response to the Pre-Appeal Brief Request for review, the panel reopened prosecution, and the § 112 rejection was withdrawn in the next Office Action mailed October 17, 2007. Thus, Applicant has clearly demonstrated that the term "command line utility," as a whole, meets the requirements under § 112. Applicant asserts that separating the term "command line" from the tem "utility" is inconsistent with the 35 U.S.C. §112 rejection and Applicant's successful traversal. Thus, based on the broadest reasonable interpretation of the term "command line utility," the interpretation of the term by one of ordinary skill in the art, and the prosecution history of the present application, Applicant asserts that the term "command line utility" should be considered as a whole and is not reasonably interpretable as merely a "utility."

Further, as previously argued, Buxton does not discloses a "utility," or a "command line utility" as recited in independent claims 1, 15, and 21. Buxton discloses "OLE libraries" that are defined as "system-level services" that call a "WIN 32 API." Buxton, col. 8, lines 6-8. Applicant asserts that there is a clear difference between a *service* and a *utility*, especially the "command line utility" recited in independent claims 1, 15, and 21. Further, as known to those of ordinary skill in the art and as stated in Buxton, API's are "application program interfaces" which are also quite different than a utility and a "command line utility." As they are described in Buxton, neither "application program interfaces" nor "system-level services" are "executable from a command line prompt," and thus cannot be considered a "command line utility". Additionally, even if Buxton disclosed a "utility," it ***does not*** disclose either "command line utility" or "invoking, by an application, a call of command line utility, the application providing an identifier in the call of the command line utility" as recited in independent claim 1, 15, and 21.

The Examiner also cited the phrase "command line interpreter" in Buxton and the "invoking of the APIs (i.e. utilities) seen in Buxton". Final Office Action, page 18. Contrary to the Examiner's assertion, Buxton discloses a "command line interpreter" as a means for implementing a user interface, not for invoking the API's. *Id.* at col. 8, lines 45-52. As stated above, the APIs are invoked by the "system level services", i.e., the OLE libraries in Buxton. *Id.*

at col. 8, lines 8-12. Mere disclosure of a "command line interpreter," such as used to implement the user interface of Buxton, cannot anticipate the "command line utility" or "invoking, by an application, a call of command line utility, the application providing an identifier in the call of the command line utility" as recited in the present claims.

2. Qureshi does not disclose storing of information in a location "identified by an identifier" as recited by independent claims 1, 15, and 21

The Examiner stated that Qureshi discloses "storing of information in a location 'identified by an identifier'…it more discloses a registration routine via system calls to store an identifier in the registry (Col. 3, Lines 26-46)." Applicant respectfully disagrees with the Examiner's assertion. In that portion of Qureshi cited by the Examiner, Qureshi does not mention the terms "identifier," or any derivation thereof. Qureshi, col. 3, lines 26-46. Qureshi refers to the storing of "configuration information" in a registry by a registration routine. *Id.* Applicant notes that the "registration routine" is provided by a "registration DLL." *Id.* at col. 8, lines 18-20. Such a registration DLL is not a "command line utility," as a DLL is a "dynamic linked library," e.g., a library of routines for use by programs.

Applicant is unable to find any other descriptions in Qureshi that could anticipate the claim feature cited above. In another portion, Qureshi mentions identifying a "key entry to be assigned." *Id.* at col. 6, lines 43-46. Qureshi states: "[t]he key entry to be assigned is identified by a quoted character string or by the default key entry designator "@"... [f]ollowing the identification of the key entry is the assignment operator "=" which is, in turn, followed by a specific value to assign to the key entry." *Id.* Qureshi is referring to a file that contains the "configuration information" to be stored in the registry. As best understood, this file appears to be prepopulated with "configuration information" for the application executing the registration routine from the registration DLL. This is far different than an "identifier" that is provided in the call of a "command line utility" as recited by independent claims 1, 15, and 21. While the "configuration information" is identified as "key entry" and "key entry values" in the file, there

does not appear to be any "output" from a utility or a "command line utility" identified by these identifiers.

3. Hill does not disclose a "system storage" as recited by independent claims 1, 15, and 21

Independent claims 1, 15, and 21 each recite storing the output of the command line utility in a "system storage." Applicant asserts that Hill does not disclose this "system storage." In rejecting the clam element cited above, the Examiner stated:

> Specifically, the command redirection taught in Hill does not teach redirection to a 'temporary file', the file of Hill is not temporary. Instead the file of hill, which is stored on a computing system anticipates the "system storage" of the current claim limitation. Finally, it is noted that the applicant's argued novelty "without 'he need to create a temporary file" appears nowhere in the claim language and therefore is not required by the claim.
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> Final Office Action, page 21.

Applicant asserts that the "system storage" of independent claims 1, 15, and 21 is not anticipated by the pipe command disclosed in Hill. As stated in the specification of the present Application, the system storage is a "system-wide storage location" that is "available to all user applications and is, furthermore, maintained by operation of the underlying operating system." Application, page 3. Applicant asserts that a file created by the pipe command cannot meet this description. Indeed, Applicant discussed the use of the pipe command and the corresponding file in the Background of the present Application. In the Background, Applicant stated that conventional techniques pipe output from the command line utility to a temporary file. *Id.* at page 1. While Applicant notes that the pipe command does not necessarily create a temporary file, as stated in the Background, "[s]ound programming practice calls for the destruction/removal of the temporary file created." *Id.* Additionally, the Background section discusses disadvantages with the pipe command and associated file, such as lack of "file creation privileges," "the disk the application has access to if full," the file name "may already by in use," the PC may be "disk-less," and "maintenance of temporary files is left to the calling application."

Id. at pages 1-2. Thus, Applicant has clearly identified in the Application the difference between the pipe command and redirection to a file and the "system storage" of independent claims 1, 15, and 21.

Further, the Examiner stated that the "argued novelty 'without the need to create a temporary file' appears nowhere in the claim language and therefore is not required by the claim." Final Office Action, page 21. Applicant's recitation of the language "without the need to create a temporary file" is simply a direct quotation of the Examiner's own characterization of the present Application. In the Office Action mailed October 17, 2007, the Examiner stated the following: "Applicant claims novelty in providing a mechanism by which an application program may obtain output from a command line utility without the need to create a temporary file." Office Action mailed October 17, 2007, page 8. Applicant notes that the Examiner was using the characterization to justify a rejection under 35 U.S.C. § 103. To the extent that the Examiner maintains a rejection under 35 U.S.C. § 103, Applicant respectfully requests that the Examiner's statements regarding the characterization of Applicant's invention remain consistent. If the Examiner objects to this characterization, Applicant respectfully requests that the Examiner refrain from using such a characterization in making the rejection.

4. None of the cited references disclose "retrieving" or "causing the application to retrieve" as recited by independent claims 1, 15, and 21

Applicant respectfully asserts that the Examiner has not asserted the claim elements "retrieving, by the application, the command line utility output from the system storage at the location identified by the identifier" recited by claim 1, "cause the application to retrieve command line utility output in system storage at the location identified by the identifier" as recited by claim 15, and "the application to retrieve the command line utility output from the location identified by the identifier" recited by claim 21.

In responding to the previous Office Action, the Examiner stated that "[a]lso, the retrieving the command line utility output has been anticipated bye Buxton (see Col. 10, lines 8-

10)." Final Office Action, page 23. Applicant is unable to determine where in Buxton,

including the passage cited by the Examiner, Buxton discloses the claim features cited above.

The portion of Buxton cited by the Examiner states: "each OLE control has a subkey under the

CLSID interface that OLE libraries 230 use to find out information about the OLE control."

Buxton, col. 10, lines 8-10. While Applicant agrees that the OLE libraries disclosed in Buxton

are retrieving information from a registry, Applicant asserts these OLE libraries, even if used in

the context of an application, are not retrieving any "command line utility output" stored in the

"system storage" and "identified by the identifier." Further, Applicant asserts that the

Examiner's characterization of OLE libraries as an "application" that retrieves the output of a

command line interpreter is inconsistent to the Examiner's earlier assertion that the OLE libraries

anticipate a "utility" or a "command line utility." The OLE libraries, e.g. system-level services,

cannot be both a "utility" and an "application" that retrieves information stored by the "utility."

5. Deficiencies of the Combination

In responding to Applicant's arguments in the previous response, the Examiner, citing

KSR, stated:

> The use of the hill reference in overcoming the shortcomings of
> AAPA, Would have been obvious to one of ordinary skill in the art
> at the time of the invention, as described above, as the
> improvement of resource efficiency is a well-known market
> demand such as described in the KSR ruling above.

> Final Office Action, page 23.

While Applicant admits that *KSR* does mention "market demand," the "market demand"

factor is discussed in the context of not limiting the obviousness determination to a teaching,

suggestion, or motivation to combine test. Further, KSR does not diminish or remove the

dangers of hindsight, and in fact reiterates such dangers:

> A factfinder should be aware, of course, of the distortion caused by
> hindsight bias and must be cautious of arguments reliant upon ex
> post reasoning. See Graham, 383 U. S., at 36 (warning against a
> temptation to read into the prior art the teachings of the invention

in issue and instructing courts to guard against slipping into the use
of hindsight' " (quoting Monroe Auto Equipment Co. v.
Heckethorn Mfg. & Supply Co., 332 F. 2d 406, 412 (CA6 1964))).

KSR, 82 U.S.P.Q.2d at 1397.

Therefore, Applicant continues to assert that the Examiner's assertion is conclusory and
an impermissible use of hindsight. Applicant notes in the initial response to Applicant's traversal
of the combination, the Examiner stated that the combination is an efficient use of resources. In
the above rejection, the Examiner stated that the combination is obvious because an "efficient
use of resources" is a "market demand." Applicant objects to the Examiner's assertion that
piping the output of a script command to a registry edit command is obvious because it is an
efficient use of resources. The Examiner has not responded to Applicant's argument that the
combination is conclusory and only possible because of the use of impermissible hindsight.
Applicant believes that simply pointing to Applicant's described advantages in Applicant's own
Application does not provide the objective analysis required in an obviousness determination.
The assertion of an "efficient use of resources" as obvious would obviate any combination and
would render any obviousness determination merely cursory and remove Applicant's ability to
respond.

Further, although the Examiner stated "use of the Hill reference in overcoming the
shortcomings of AAPA, Would have been obvious to one of ordinary skill in the art at the time
of invention," Applicant points out that the pipe command and a redirection file are discussed in
the Background section of the present Application as having specific disadvantages.
Application, page 1. As stated above, neither the redirection nor piping commands disclosed in
Hill allow piping to a system storage location such as a registry. Thus, Applicant asserts that
Hill, which discloses the pipe command and redirecting to a file, does not offer any techniques
for overcoming those very same shortcomings described in AAPA.

Accordingly, Buxton, Qureshi, Hill, and AAPA, taken alone or in combination, do not disclose each and every feature recited in the present independent claims, nor has the Examiner set forth a proper basis for combining the references in the manner recited. As such, whether taken alone or in combination, the cited references do not render obvious independent claims 1, 15, and 21 and the claims dependent therefrom.

Conclusion

In view of the remarks and amendments set forth above, Applicant respectfully requests reconsideration of the Examiner's rejections and allowance of all pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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